

**PT 04-40**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**OLD HOUSE SOCIETY  
APPLICANT**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**A. H. DOCKET #           03-PT-0010  
DOCKET #                02-57-54  
PI #                       (43) 21-04-254-012**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue; John P. Elterich, Attorney at Law for the Old House Society.

**Synopsis:**

The hearing in this matter took place to determine whether McLean County Parcel Index No. (43) 21-04-254-012 qualified for a property tax exemption during the 2002 assessment year.

Mark Edwards, Executive Director of the Old House Society, (hereinafter referred to as the "Applicant") was present and testified on behalf of Applicant.

The issues in this matter include, first, whether Applicant was the owner of the parcel during the 2002 assessment year; secondly, whether Applicant is a charitable organization; and lastly, whether Applicant used the parcel for charitable exempt purposes during the 2002 assessment year. After a thorough review of the facts and law presented, it is my

recommendation that the requested exemption be denied. In support thereof, I make the following findings of fact and conclusions of law in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that McLean County Parcel Index No. (43) 21-04-254-012 did not qualify for a property tax exemption for the 2002 assessment year were established by the admission into evidence of Dept. Ex. No. 1. The basis of the Department's denial was that the property was not in exempt ownership and use. (Dept. Ex. No. 1; Tr. p. 7)

2. Applicant obtained possession of the premises on or before June 29, 2001. (Dept. Ex. No. 1)

3. On September 4, 2003, Mark R. Edwards, Cheryl Edwards, and Fred Wollrab, as Sellers, signed a "McLean County Bar Association Real Estate Committee suggested form **AGREEMENT FOR WARRANTY DEED**" (hereinafter referred to as the "Agreement") for the subject property. John P. Elterich, President of Applicant, as Buyer, signed the document on September 17, 2002. The consideration for purchase section states that Buyer will make all payments due under Seller's first mortgage. (Dept. Ex. No. 1)

4. The Sellers include Mark Edwards, who is the Executive Director of Applicant; Cheryl Edwards, his wife; and Fred Woolrab, a member of Applicant. (Tr. pp. 22, 31-32)

5. According to the Agreement, a warranty deed will be executed by Seller and delivered to Buyer upon full compliance with the provisions of the Agreement. Buyer agrees to pay all general real estate taxes assessed against the premises. (Dept. Ex. No. 1)

6. According to the Agreement, Applicant, as buyer, covenants and agrees to pay for the purchase of the property “the sum of One-Hundred Sixty-Three Thousand Eight-Hundred Thirty-Five and 30/100 Dollars (\$163,835.30) in the manner following: Buyer will make all payments due under the Seller’s First Mortgage, including any balloon payments due at maturity, and Buyer will pay all taxes, insurance and maintenance required for the premises.” (Dept. Ex. No. 1)

7. The Agreement in paragraph 7 entitled “**DEFAULT-REMEDIES OF SELLER**” states<sup>1</sup>:

In case of failure of Buyer to pay any one (1) or more installments as hereinbefore provided, or if Buyer shall fail to keep the premise insured, or to pay any insurance premiums required by Buyer to be paid, or if Buyer shall fail to pay taxes or special assessments, or if Buyer shall suffer any lien to arise on the premises, or if Buyer shall fail to perform any other covenant of this Agreement by Buyer to be performed, then Seller shall have the following remedies, none of which shall be exclusive of the other:

- A. At Seller’s election to accelerate and declare due the entire remaining principal sum, together with all accrued interest thereon, and to bring an action at law for the balance of the purchase price due;
- B. At Seller’s election to sue for specific performance of this Agreement;
- C. At Seller’s election, to treat this Agreement as at an end, to terminate this agreement, to retain all payments made, and to re-enter and regain possession of said premises as if this Agreement had never been made, subject to the provisions of any forcible entry and detainer or other statute relating to the termination of this Agreement and relating to the respective rights of the parties. In the event Seller terminates this Agreement due to Buyer’s default, Seller shall have the further

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<sup>1</sup> Verbatim recitations from the Agreement.

right to recover from the Buyer reasonable rent for any period of time Buyer remains in possession subsequent to Seller's rightfully having declared a termination of this Agreement;<sup>2</sup>

- D).** Seller may bring an action against Buyer for any damages accruing to Seller by reason of Buyer's failure to perform any covenant or agreement contained herein. (Dept. Ex. No. 1)

8. The loan payment paperwork from the bank relating to the mortgage on the subject property is sent to Mark R. Edwards, Cheryl Edwards and Fred Wollrab. Applicant is neither a guarantor nor signatory on the mortgage. (Tr. pp. 31-39, 50-52)

9. Applicant's bylaws state that the purpose of Applicant is to preserve buildings, landscapes and historic resources in McLean County that are more than 50 years old. Applicant's general membership consists of any person who has paid their dues as set by the Board of Directors for the fiscal year. Applicant has approximately 290 member households. Annual dues are \$25.00. For the dues, a member receives Applicant's quarterly newsletter. Applicant has a seven-member Board of Directors. (Dept. Ex. No. 1; Tr. pp. 14, 16-17, 25)

10. Applicant was incorporated under the General Not For Profit Corporation Act of Illinois on August 24, 1983 for:

The purpose of the Old House Society is for the study and preservation of the old house and the community of which it is an integral part. This shall include, but not be limited to, the techniques of construction and restoration of the old house and grounds, the history of the owners and their surrounding community and the education of the present community as to the importance of preserving our architectural heritage. (Dept. Ex. No. 1)

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<sup>2</sup> The document has I) as the next paragraph as recited herein. Either the parties revised the suggested form to include paragraph I) or the entire document (including paragraphs D-H) was not admitted into evidence.

11. On the subject property is a one-story, 5,098 square-foot building that houses Applicant's architectural salvage materials. The building is open for sales of items and materials, on a daily basis, Tuesday through Friday from 12:00 p.m. to 6:00 p.m. and on Saturday from 10:00 a.m. to 3:00 p.m. (Dept. Ex. No. 1)

12. The architectural materials are salvaged from local buildings about to be demolished or are donated by individuals, businesses, and organizations in the community. All proceeds of the sales are paid to and belong to Applicant. (Dept. Ex. No. 1; Tr. p. 15)

13. For the period ending December 31, 2001, Applicant's income totaled \$73,759.49. The breakdown of that amount is: Architectural Warehouse = \$38,501.34 (52.20%); B-N Lost Book = \$1,405.00(1.90%); 2001 Old House Fair = \$14,830.00 (20.11%); House Tour = \$3,950.00 (5.36%); Membership Dues = \$4,305.00 (5.36%); Sponsors = \$2,510.00 (3.40%); Friends = \$3,422.27 (4.64%); Grants = \$2,500.00 (3.39%); sales tax collected = \$2,290.45 (3.11%); and interest income = \$45.43 (0.06%) (Dept. Ex. No. 1)

14. Applicant's expenses for the same time period were \$69,515.04 for an ending balance of \$6,033.30. (Dept. Ex. No. 1)

15. Applicant's total assets as of December 31, 2001 were \$203,498.30; liabilities were \$174,062.90, for a general fund balance of \$29,435.40. (Dept. Ex. No. 1)

16. Applicant's "Cash Flow" document<sup>3</sup> for 2002 shows total cash in of \$96,410.73. Of that amount, sales account for \$72,466.92 (75.16%) which are broken down by: Warehouse = \$64,849.38; Tour = \$5,520.00, Fair = \$1,997.54 and 2001 Fair = \$100.00. Sponsors income<sup>4</sup> total is \$8,175.00 (8.48%) which is broken down by Warehouse = \$435.00; Tour = \$2,125.00;

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<sup>3</sup> The terminology and percentages are taken directly from the document.

<sup>4</sup>Sponsor's income amount includes a fund raising luncheon Applicant held. (Tr. p. 29)

Fair<sup>5</sup> = \$5,600.00 and Membership = \$15.00. The Dues total of \$4,400.00 (4.61%) comes solely from Membership. Donations of \$5,584.39 are from Friends. Grants<sup>6</sup> of \$1,500.00 (1.56%) are generated from the Warehouse = \$1,000.00 and Friends = \$500.00. Sales tax of \$4,209.99 (4.37%) comes solely from the Warehouse. Interest income of \$34.43 (0.04%) is also solely from the Warehouse. (Applicant's Ex. No. 1; Tr. pp. 27-30)

17. Applicant's expenses as shown on the "Cash Flow" document were \$97,872.39 for a net loss of \$1,461.00 for that time period. (Applicant's Ex. No. 1)

18. Applicant's "Balance Sheet" for the period ending 12/31/02 shows total assets of \$205,571.64, total liabilities of \$156,365.79, for a "General Fund Balance" of \$49,205.85. (Applicant's Ex. No. 1)

19. Applicant is exempt from the payment of Federal income tax pursuant to a finding that Applicant is a charitable organization under §501(c)(3) of the Internal Revenue Code. (Dept. Ex. No. 1; Tr. pp. 22-23)

20. Applicant has a paid executive director and a small paid staff that runs the day-to-day operations. The executive director's office is in the building on the subject property. (Dept. Ex. No. 1; Tr. pp. 14, 31)

21. Applicant has a small research library located in the building on the subject property. The Warehouse and research area are open to the public. (Dept. Ex. No. 1; Tr. pp. 14-16)

22. In addition to Applicant's Warehouse, its activities include *inter alia*, presenting seminars and educational programs at the State Farm Classic Homes Fair held at the David Davis

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<sup>5</sup> Applicant co-sponsored the Fair so all entries entitled "Fair" show Applicant's portion of the income. (Tr. p. 28)

<sup>6</sup> If a State Farm employee volunteers for a not-for-profit organization for 40 or more hours a year, State Farm will make a donation to the organization of \$500.00 on behalf of the employee. Applicant had 3 volunteers who qualified for the State Farm program. (Tr. p. 29)

Mansion every Fall, a fair at the Interstate Center, where restoration contractors primarily from Central Illinois are available to help answer questions about old houses; sponsors an annual house tour; presents annual preservation awards; and gives assistance to other communities with questions about old historic houses. (Dept. Ex. No. 1; Tr. pp. 18-21)

23. In 2002, Applicant's Warehouse was by far its biggest revenue source. (Tr. p. 30)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). Applicant has requested a property tax exemption under the charitable provision of the Property Tax Code, 35 **ILCS** 200/1-1 *et seq.*

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 **ILCS** 200/15-65, which exempts certain property from taxation as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) Institutions of public charity.
- (b) Beneficent and charitable organizations incorporated in any state of the United States, including organizations whose owner, and no other person, uses the property exclusively for the distribution, sale, or resale of donated goods and

related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

- (c) Old people's homes, facilities for persons with a developmental disability, and not-for-profit organizations providing services or facilities related to the goals of educational, social and physical development, if, . . . .

Therefore, in order for property to qualify for a charitable property tax exemption an applicant must prove that the property is owned by a charitable organization and used for charitable purposes. Lena Community Trust Fund, Inc. v. Department of Revenue, 322 Ill.App.3d 884 (2<sup>nd</sup> Dist. 2001)

There are two parts to subsection (b) of the exemption at 35 **ILCS** 200/15-65. The two parts are that (1) the applicant/owner of the property must be a beneficent and charitable organization using the property exclusively for the distribution, sale or resale of donated goods and related activities and (2) the applicant must use all the income from those activities to support the charitable, religious or beneficent activities of the owner.

### **OWNERSHIP**

Mark R. Edwards, Executive Director of Applicant, his wife Cheryl, and Fred Woolrab, a member of Applicant are listed as the Sellers of the subject property on the Agreement for Warranty Deed. John P. Elterich, President of Applicant, is listed as the Buyer. That document is the only evidence submitted in this case regarding the ownership of the subject property. It was executed on September 17, 2002, when Elterich signed it. The Agreement provides that Applicant, as Buyer, would have possession on June 29, 2001, but this date has no meaning given the date of execution of the document.



Ownership of real estate is a broad concept and can apply to something other than the record or legal title. Mason v. Rosewell, 107 Ill.App.3d 943 (1<sup>st</sup> Dist. 1982). The determinative analysis requires detailed and extensive findings as to which is the party or entity that holds sufficient indicia of ownership to have effective control. Title refers only to a legal relationship, while ownership implies control. People v. Chicago Title and Trust Co., 75 Ill.2d 479 (1979). The term “owner” may include one who has the control or occupation of land with a claim of ownership. *Id.* at 489. The concern is with the “realities of ownership.” City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992). The key elements of ownership are control and the right to enjoy the benefits of the property. Equitable title alone does not confer any right of enjoyment or benefit. *Id.* at 505, People v Chicago Title and Trust Co., *supra* at 489.

In People v. Chicago Title and Trust Co., the Illinois Supreme Court held that the beneficiaries of a land trust were the owners of property for purposes of real estate taxation because they had control of the property and the rights to its benefits. Although the trustee held legal title to the land, the trustee lacked any other indicia of ownership. The court stated: “Indeed, there is not a single attribute of ownership, except title, which does not rest with the beneficiary. The rights of creation, modification, management, income and termination all belong to the beneficiary.” *Id.* at 492. “A common-sense definition of ‘owner’ as used in a tax statute must encompass the beneficiary of a land trust, because the beneficiary controls the purchase, sale, rental, management and all other aspects of land ownership. The titleholding trustee may act only on the beneficiaries’ direction.” *Id.* at 493.

The rights of owners as enumerated in People v. Chicago Title and Trust, Co., *supra*, are of creation, modification, management, income and termination. Any and all rights including the right of termination of the Agreement itself remain with the Sellers in this instance. The Buyer

only acts at the direction of the Sellers. In this case, Applicant doesn't even have legal title to the property, as did the trustee in People v. Chicago Title and Trust, Co. Applicant only has duties that are enumerated in the Agreement. Like that trustee, Applicant has not established it has sufficient indicia of ownership of the property. The Sellers, on the other hand, are like the land trust beneficiaries in that they have the rights attributed to owners.

Cole Hospital, Inc. v. Champaign County Board of Review, 113 Ill.App.3d 96 (4<sup>th</sup> Dist. 1983) involved a hospital-lessee and a sale-and-lease-back agreement. The hospital had conveyed legal title to the property to a private organization so it could secure financing to build a new facility. The hospital had a troubled financial history and could not obtain conventional financing. The property was then leased back to the hospital for a 20-year term with specific options to renew. The sale-and-lease-back agreement gave the hospital the absolute right to purchase the property at ten times the annual rent on the eleventh and sixteenth anniversary dates and the right of first refusal if the lessor received a *bona fide* purchase offer. All the terms of the lease remained in full force and effect in the event of a sale to a third party. The hospital was responsible for paying all real estate taxes, insurance, and maintenance costs. The appellate court approved the exemption, because the sale-and-lease-back agreement was undertaken as an alternative to conventional financing and the lease gave the hospital-lessee several significant incidents of ownership in the property. There was no dispute by the parties and the court that the use of the property was charitable.

The facts at issue are not similar to those in Cole Hospital, Inc. v. Champaign County Board of Review, *supra*. Applicant does not have a sale and lease back arrangement with the Edwards and Woolrab. Applicant has not established that it had a troubled financial history and could not obtain conventional financing. Rather, Applicant's salvage operation started in

donated warehouse space, which it quickly outgrew. It was looking for buildings to rent when the Warehouse on the subject property came on the market for sale. Applicant decided to purchase the building, but the only way it could buy it quickly was if the Edwards and Woolrab would cosign a bank note guaranteeing repayment or until the Applicant could make arrangements to assume ownership and responsibility for the building. The bank financed the entire loan purchase with no down payment. (Tr. pp. 21-22) Therefore, the arrangement at issue was not done because of an inability to obtain conventional financing, but rather because the Applicant was in a hurry to obtain the property. In addition, unlike the situation in Cole Hospital, Inc. v. Champaign County Board of Review, *supra*, there is a dispute here as to whether the use of the subject property is charitable.

In Wheaton College v. Department of Revenue, 155 Ill.App.3d 945 (2<sup>nd</sup> Dist. 1987), a different result was reached. There the appellate court held that a college-lessee did not have sufficient incidents of ownership of the property to qualify for an exemption. The property at issue consisted of an apartment complex held in trust. The trustee-bank held legal title to the land. The trust's sole beneficiaries were private individuals. After the trust was created, the college entered into a 30-year lease of the complex. The terms of the lease gave the college only the rights to change existing structures and to sublet. Wheaton College paid the monthly lease amount, all taxes, utilities, and insurance for the complex. The appellate court found that the benefits of the lease agreement inured primarily to the private individuals that were the beneficiaries of the trust and not to the college. The court then concluded that the lease did not give the college sufficient incidents of ownership in the property to qualify for a property tax exemption.

The facts in this case support even more strongly a conclusion that Applicant does not own the property than those established in Wheaton College v. Department of Revenue, *supra*. At least Wheaton College could change existing structures and sublet the premises. There is nothing to indicate that Applicant can use its payments for the subject property as collateral to make improvements on the property. In fact, there is nothing in the Agreement that shows that Applicant has any right to make any improvements to the property at all. If Applicant intends to transfer any rights of ownership of the property it has, it must have Seller's written consent. Applicant, just as Wheaton College, has no rights of creation, modification, management, income and termination, the indices of ownership enumerated in People v. Chicago Title & Trust Co., *supra*.

There are differences between duties and rights when ownership of property is at issue. The duty established by the Agreement herein is that Applicant is required to make the mortgage payments. The only rights Applicant has that appear in the Agreement are possession of the property and the right to ultimately get a deed if Applicant makes all the payments. The remainder of the rights in this case remains with Woolrab and the Edwards. The most significant right remaining with the Sellers is that if Applicant defaults on the payments for the property, the Edwards and Woolrab, who have the right to regain possession of the property, can take any and all rights away from Applicant as well as any benefits Applicant accrued.

The Agreement for Warranty Deed has the language of a commercial lease. The Agreement is analogous to a lease in that a lessee pays a fixed amount for rent, taxes, maintenance charges and other liabilities incurred on a property, as does Applicant herein. The essential requirements of a lease include a definite agreement as to the extent and boundary of the property, a definite and agreed term, and a definite and agreed price and manner of payment.

Jackson Park Yacht Club v. Illinois Department of Local Government Affairs, 93 Ill.App.3d 542, 546-7 (1<sup>st</sup> Dist. 1981). Leases are for a fixed and determinate period conditioned on the payment of a fixed annual rent. City of Chicago v. Tribune Co., 248 Ill. 242, 248 (1911). As Applicant has agreed to make the mortgage payments of the Edwards and Woolrab, the amount to be paid is fixed. The determinate period is the length of the mortgage, and the extent and boundary of the property is the Parcel No. at issue and the Warehouse upon it.

The only indications of Applicant's mortgage payment amount in 2002 is in Applicant's Ex. No. 1 entitled "Old House Society Cash Flow 2002" which has an itemization for "Warehouse Mortgage" showing a total of \$20,202.66 (20.64%) of which \$15,205.52 is listed under the Warehouse category and \$4,997.14 is listed under the Friends category. The last page of the exhibit shows "Warehouse building - \$170,000.00 and Mortgage Due 6/29/06 - \$156,365.79." As there is no breakdown of principle and interest, the numbers have no meaning regarding the total liability of Applicant and at what point the mortgage will be paid in full. As the Department pointed out, the Applicant chose not provide the mortgage and admit it into evidence. (Tr. p. 52)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

This Applicant failed to establish that it had an ownership interest in the property for the year at issue. Since Applicant has the burden of showing that it qualifies under all the criteria of a property tax exemption, its failure to present any meaningful evidence allowing an analysis of indicia of ownership means that the exemption must fail on this ground alone.

The Old House Society makes payments to the private owners that are equal to the monthly mortgage payments, as well as pays any taxes, insurance, and maintenance costs. Under paragraph 7 of the Agreement between the parties, if Applicant fails to meet any of its obligations, the Sellers have the option to declare the Agreement “at an end, to terminate this agreement, to retain all payments made, and re-enter and regain possession.” (Dept. Ex. No. 1 p. 9) Sellers retain other remedies upon breach of the Agreement, and those provisions would allow them to take advantage of the Old House Society’s years of payments of mortgage and other expenses. If Applicant defaults, the Edwards and Woolrab are legally allowed to take full advantage of such payments through a sale or lease of the same premises. This opportunity to profit from the arrangement is a real benefit of ownership and is more than title alone. It must thus negate a finding of charitable ownership for this Applicant.

### **USE**

For an applicant to qualify for a charitable exemption, there must be ownership by a charitable organization and charitable use of the property. The Department denied the requested exemption on both grounds. A charitable entity that sells donated goods and uses all of the income to support its charitable activities may qualify for a property tax exemption. Applicant argues that it falls under subsection (b) of the statutory language at issue, but there are two parts to subsection (b). First, the entity must sell donated goods and second, the entity must be a

charity performing charitable acts. Applicant has provided nothing to show it is a charity performing charitable acts.

Applicant's method of operation is to take donated items and sell them at market price. According to Mr. Edwards, "(w)e operate basically like a thrift shop. People bring old building parts to us that they don't need. They donate." (Tr. p. 14) Illinois courts have determined that this basic activity does not amount to a charitable activity. In Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2<sup>nd</sup> Dist. 1988), the court held that a thrift shop, which made profits that were subsequently used to fund charitable activities, was not exempt from property taxation as the activities were essentially commercial. Applicant's way of pricing items is that it "tries to charge a fair price for the items it sells." Applicant has checked on the internet and found that prices for its items tend to be higher in large, urban areas than in its area. (Tr. pp. 14, 30, 41-42)

Applicant argues that the language in 35 ILCS 200/15-65(b) which allows charitable organizations to maintain their exemption for real estate upon which they conduct thrift operations and use "all the income from those activities to support the charitable, religious or beneficent activities" of the organization, has nullified Salvation Army v. Department of Revenue, *supra*. Such is clearly not the case.

Applicant engages in activities that are not charitable. Applicant's primary activity, as it admits on the record, is to sell donated structural items that are architecturally interesting. Mr. Edwards testified to this fact:

Q. So in looking at this, you would say that the sales from the warehouse is by far the biggest moneymaker for the Old House Society; is that right?

A. It was in 2002. I don't know that it will necessarily continue that way. I think we've put a lot of effort into the warehouse over the last couple of years.

I think our fair is -- might actually become our largest activity at some point, but I think its just that we've -- the warehouse -- we're demand driven just like many organizations. We can offer many different things to the public and we are not sure which ones they are going to support the most and which ones they won't. And the public has been receptive to the warehouse. I don't know if it will continue to be that way. (Tr. p. 30)

An organization whose primary activity "by far" is a thrift operation cannot bootstrap its commercial endeavors into an exemption under the provisions of 35 ILCS 200/15-65(b). If that had been the case, the legislature would not have specified that the thrift operation must devote all its income to activities that are "charitable, religious or beneficent." (35 ILCS 200/15-65(b)). This Applicant clearly considers its thrift operation to be its primary activity and it considers that activity to be a charitable activity in its own right. The opinion in Salvation Army v. Department of Revenue, *supra*, clearly declares that such activity, in its own right, is not a charitable activity, but rather a commercial activity and the statutory provision has not changed that judgment.

In addition, the Old House Society's fundamental purpose is not charitable. A charitable organization must confer charity on an indefinite number of people. Friends of Israel Defense Forces v. Department of Revenue, 315 Ill.App.3d 298 (1<sup>st</sup> Dist. 2000). Applicant's primary benefits are limited to those who have an interest in retaining the value of real estate in older neighborhoods. (Tr. pp. 17-18) This may be for their own economic benefit, or in the broadest sense, a benefit to certain portions of the communities in which they live. As Mr. Edwards testified:

Some of it is economic. People are looking for ways of what's an effective way to take care of older neighborhoods from an economic perspective. How do you maintain property values? How do you keep crime down?



Part of it is aesthetic. People are interested in the older homes and the brick streets and -- and the older landscapes. And I think part of it, too, is people are interested in the history that it brings to the community. (Tr. pp. 17-18)

Although an argument might be made that the advancement of appreciation of architecturally older styles is pleasing and profitable to those who live and move in those neighborhoods, the same could be said for interest in any architectural style. There are adherents of modern and post-modern architectural styles. Profits are made for the advancement of their appreciation. However, no one would argue that such advancement is a charitable activity, regardless of the value that good modern or post-modern architecture might bring to a building, neighborhood, or community that contains it.

Architectural taste is no different than any other matter of taste. Advancement of historically interesting building styles, even to those that are genuinely vintage, command no greater claim to a charitable exemption, on that basis, than does the promotion of any other architectural style. The benefits are to the adherents of the styles of architecture, but there are no direct benefits to the general public, as legally required.

In Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51 (1978), the Illinois Supreme Court held that an installment-contractor purchaser of property was entitled to a charitable property tax exemption. Under the contract, the purchaser made a substantial down payment, assumed possession of the property, and continued making monthly payments toward the full purchase price. Although the contract stated that no title, legal or equitable, would pass to the purchaser until the full purchase price was paid, the court allowed the exemption finding the purchaser to be the real owner. The court believed that to deny this purchaser, a charitable institution, the benefit of an exemption because it relied on an alternative

form of financing would run counter to the purposes and policies underlying the exemption. *Id.* at 62.

Therefore a contract owner may qualify for a property tax exemption but only when it is clear that the use of the property qualifies for exemption. As this Applicant has not established that it used the property for charitable purposes, the holding in Christian Action Ministry v. Department of Local Government Affairs, *supra*, is not determinative.

There is nothing in the documents presented that allows the conclusion that Applicant has the indicia of ownership necessary for a determination that Applicant was the owner of the property for purposes of the pertinent exemption. There is also no indication that Applicant uses the property for charitable purposes.

For the foregoing reasons it is recommended that McLean County Parcel Index No. (43) 21-04-254-012 remain on the tax rolls for the 2002 assessment year and be assessed to the Applicant as the Agreement requires.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
Date: October 6, 2004